

STATE OF MICHIGAN
COURT OF APPEALS

COOPER FERGUSON,

Plaintiff-Appellant,

v

MONTE ABBS and CANDACE ABBS,

Defendants-Appellees.

UNPUBLISHED

August 6, 2002

No. 227223

St. Joseph Circuit Court

LC No. 98-000491

Before: Meter, P.J., and Markey and Owens, JJ.

PER CURIAM.

In this real property action, plaintiff appeals by leave granted from a circuit court order reversing a judgment of possession entered by the district court. We reverse the circuit court and reinstate the district court judgment.

The federal government placed a lien on defendants' real property after their failure to pay income taxes. The Internal Revenue Service (IRS) then sold the property to plaintiff, and the statutory redemption period ran without action by defendants. The IRS subsequently quitclaimed the property to plaintiff, but defendants refused to vacate the property. Plaintiff therefore filed the instant case in the St. Joseph District Court, seeking possession of the property under the summary proceedings act, MCL 600.5704.

Defendants alleged both that the district court lacked jurisdiction over the case and that the district judge was biased and should be disqualified. The court disagreed and granted a judgment of possession to plaintiff. After defendants appealed to the circuit court, the circuit court remanded the case to the district court, directing the court to hold a hearing on the disqualification issue and to decide anew the jurisdictional issue. Plaintiff then filed for leave to appeal to this Court, and we granted leave.¹

Plaintiff argues that the circuit court erred by remanding the case to the district court. He first contends that a remand with regard to the disqualification issue was unnecessary because defendants' disqualification motion was, among other things, patently without merit.

¹ In light of the appeal to this Court, the district court has apparently taken no further action on the case at this point.

We review for an abuse of discretion factual findings made with regard to a motion for disqualification, *Cain v Dep't of Corrections*, 451 Mich 470, 503; 548 NW2d 210 (1996), but we review de novo the application of the facts to the law. *Id.* at 503 n 38.

Here, the district judge acknowledged defendants' motion for disqualification but initially refrained from addressing the motion and proceeded to decide the substantive issues of plaintiff's claim. Only at the conclusion of the hearing in question did the judge address the motion for disqualification. Because substantive rulings made by a judge after the occurrence of circumstances for disqualification are void, see *In re Hudson Lumber Co*, 301 Mich 77, 83; 3 NW2d 17 (1942), the court should have ruled on the motion before resolving substantive matters.

Despite this procedural irregularity, however, the circuit court erred by remanding the disqualification issue to the district court. Indeed, defendants' motion for disqualification was based exclusively on the district judge's rulings. Case law clearly dictates that disqualification for bias or prejudice cannot be established by judicial rulings alone, even if the rulings are erroneous. *FMB-First Michigan Bank v Bailey*, 232 Mich App 711, 729; 591 NW2d 676 (1998); *People v Houston*, 179 Mich App 753, 759-760; 446 NW2d 543 (1989). Moreover, defendants did not attach an affidavit to their motion as required by MCR 2.003(C)(2). Under these circumstances, where the motion was based on incorrect grounds *and* was not presented properly under the court rules, a revisiting of the motion was unnecessary. See generally *People v Bettistea*, 173 Mich App 106, 123; 434 NW2d 138 (1988). The circuit court should not have remanded the disqualification issue to the district court.

Plaintiff next contends that the circuit court should have affirmed the district court's judgment of possession because the district court, contrary to defendants' contention, has jurisdiction to hear and decide summary proceedings to recover possession of real property.

We review de novo issues of subject-matter jurisdiction. *Rudolph Steiner School of Ann Arbor v Ann Arbor Charter Twp*, 237 Mich App 721, 730; 605 NW2d 18 (1999). Similarly, we review issues of statutory construction de novo. *Haworth, Inc v Wickes Mfg Co*, 210 Mich App 222, 227; 532 NW2d 903 (1995).

Plaintiff brought his claim for possession under MCL 600.5714, which states, in part:

(1) A person entitled to premises may recover possession of the premises by summary proceedings in the following cases:

* * *

(e) When a person takes possession of a premise by means of a forcible entry, *holds possession of a premise by force after a peaceable entry*, or comes into possession of premises by trespass without color of title or other possessory interest.

(f) When a person continues in possession of premises sold by virtue of a mortgage or *execution*, after the time limited by law for redemption of the premises. [Emphasis added.]

As noted in *De Bruyn Produce v Romero*, 202 Mich App 92, 106; 508 NW2d 150 (1993), “the refusal to leave peaceably, thus requiring removal by force, constitutes a holding by force, and the plaintiff is entitled to recover possession by summary proceedings under subsection 1(e).”

The district court has jurisdiction over the summary proceedings described in MCL 600.5714. MCL 600.5704. Historically, summary proceedings were reserved for the recovery of the possession of a premises when the title to or interest in the land has not been in dispute. See *Sayles v Murphy*, 201 Mich 73, 77; 166 NW2d 989 (1918). Moreover, actions to determine title to or interests in land are traditionally vested in circuit court under MCL 600.2932(1), which states:

Any person, whether he is in possession of the land in question or not, who claims any right in, title to, equitable title to, interest in, or right to possession of land, may bring an action in the circuit courts against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff, whether the defendant is in possession of the land or not.

However, the jurisdiction of the district court was expanded by the 1980 enactment of MCL 600.8302, which states, in pertinent part:

(1) In addition to the civil jurisdiction provided in sections 5704 and 8301, the district court has equitable jurisdiction and authority concurrent with that of the circuit court in the matters and to the extent provided by this section.

* * *

(3) In an action under chapter 57, the district court may hear and determine an equitable claim . . . involving a right, interest, obligation or title in land. The court may issue and enforce a judgment or order necessary to effectuate the court’s equitable jurisdiction as provided in this subsection. . . .

An action to quiet title is equitable in nature. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). Therefore, even assuming, for purposes of argument, a bona fide dispute over the validity of plaintiff’s title in this case, the district court had jurisdiction over the proceedings.²

Indeed, Michigan law is clear that “a more specific grant of jurisdictional power is supreme over a general grant of jurisdictional power.” *Bruwer v Oaks*, 218 Mich App 392, 396; 554 NW2d 345 (1996). We conclude that MCL 600.8302(3) is more specific than MCL 600.2932(1) and thus takes precedence. See generally *Bruwer, supra* at 396; see also *Manufacturers Hanover Mortgage Corp v Snell*, 142 Mich App 548, 554; NW2d (1985) (“[t]he district court has jurisdiction to hear and determine equitable claims and defenses involving the mortgagor’s interest in the property”).

² Moreover, as noted in *Sayles, supra* at 77, in order for a summary proceeding to essentially be “transformed” into an action to quiet title, the title dispute must be raised by the evidence offered in the case and not by mere allegations. Defendants here offered no such evidence.

Because the district court did indeed have jurisdiction over the instant case, and because the record discloses no evidence offered by defendants to counter plaintiff's claim for possession,³ the circuit court should have affirmed the district court's judgment of possession.

Reversed and remanded for reinstatement of the district court's judgment. We do not retain jurisdiction.

/s/ Patrick M. Meter

/s/ Jane E. Markey

/s/ Donald S. Owens

³ We note that some of the district court pleadings are missing from the record filed with this Court. Defendants did not dispute, however, that they had failed to present necessary evidence. For example, at one hearing, defendant Monte Abbs stated that "I sure haven't had time" to secure witnesses to speak to the validity of plaintiff's deed, and defendants did not dispute plaintiff's representation that "[t]here's been no evidence presented to show that [the seizure, sale, and deed are] . . . not valid."